

Surface Transportation Board, DOT

§1017.8

§1017.5 Hearing procedures.

(a) Upon the Administrative Law Judge's determination of an employee's compliance with §1017.4(b)(8) or §1017.4(c)(7) of this part, whichever is applicable, he/she shall set the time, date, and location for the hearing, paying due consideration to convenience to the employee.

(b) All significant matters discussed at the hearing shall be documented, although a verbatim transcript of the hearing shall not be made.

(c) The Administrative Law Judge may exclude any evidence he/she deems irrelevant, immaterial, or unduly repetitious.

(d) Any party to a hearing under these regulations is entitled to present his or her case or defense by oral or documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) The Board has the initial burden of proof as to the existence and amount of the debt.

(f) The employee requesting the hearing shall bear the ultimate burden of proof.

(g) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt that reasonable minds could differ as to the existence or amount of the debt.

(h) Where the employee files a petition for a hearing contesting the offset schedule imposed by the Board, the Administrative Law Judge shall take into consideration all relevant factors as to the employee's financial situation in determining whether said offset schedule should be altered.

(i) Any party to a hearing under these regulations is entitled to be accompanied, represented, and advised by counsel, as well as to appear in person or by or with counsel.

(j) The Administrative Law Judge shall issue a final written decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing, as stated in §1017.4(b)(10) or §1017.4(c)(9) of this part, whichever is applicable.

§1017.6 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his/her disposable pay offset in accordance with the Board's offset schedule if the employee:

(a) Fails to file a petition for a hearing in conformity with the requirements of §1017.4(b)(8) or §1017.4(c)(9) of this part, whichever is applicable. However, failure to file within the requisite time period set out in §1017.4(b)(8) or §1017.4(c)(9) of this part whichever is applicable, will not result in denial of a hearing or in immediate offset, if the Administrative Law Judge excuses the late filing if the employee can show that the delay was because of circumstances beyond his/her control or because of failure to receive notice of the filing deadline.

(b) Is scheduled to appear and fails to appear at the hearing without good cause.

§1017.7 Written decision following hearing.

(a) Written decisions provided after a request for a hearing will include:

(1) A statement of the facts presented to support the nature and origin of the alleged debt;

(2) The Administrative Law Judge's analysis, findings, and conclusions, in light of the hearing, concerning the employee's or the Board's grounds;

(3) The amount and validity of the alleged debt; and

(4) The repayment schedule (including percentage), if applicable.

(b) The Administrative Law Judge's decision does not preclude an employee from requesting a waiver of a salary payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to GAO in accordance with procedures prescribed by GAO.

§1017.8 Exception to entitlement to notice, hearing, written responses and final decisions.

The Board shall except from the provisions of §1017.4 through §1017.7 any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program, requiring periodic